IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 998 OF 2007

Dahisar Navjeevan Co-operative Housing Society Ltd. .. Petitioner

versus

Rajaram Gopal Kadam & Ors. .. Respondents

Mr. Appasaheb S. Desai with Mr. R. S. Ghadge for the Petitioner.

Mr. S. S. Joshi for Respondent Nos. 1, 2 and 5.

Mr. V. M. Joshi for Respondent No. 7.

Mr. S. Z. Parab i/b. Mr. P. A. Sawant for Respondent No. 8.

CORAM : D.B. BHOSALE, J.
DATE : 17TH JULY, 2007.

ORAL ORDER :

1. Heard learned counsel for the parties.

2. Petitioner - Housing Society purchased a plot of land in 1991 for construction of a building for its 26 members and since then they are engaged in litigations before some or the other Forum. The dispute appears to be in respect of an appointment of a developer. Respondent Nos. 7 and 8 in the

Petition are developers who were appointed by the Society at two different points of time.

3. The General Body Meeting of the Petitioner Society was held on 15.8.1991. According to Petitioner, in the said Meeting a subject for an appointment of a Developer was not on the Agenda and hence no question of passing any Resolution appointing Respondent No.8 had arisen. Respondent Nos. 1 to 6 were the members of the Managing Committee in 1991 and they claim that such Resolution was passed and Respondent No. 8 was appointed as the Developer. Respondent Nos. 1 to 6 had allegedly created false record in collusion with Respondent No. 8 of the Society showing that in the said Meeting, Respondent No. 8 was appointed as a developer. In the circumstances, some members of the Petitioner society lodged a complaint against Respondent Nos. 1 to 3 and Respondent No 8 for fabricating records of the society and for executing agreement with Respondent No.8, to the GBCB CID. An offence was registered against them under Sections 465, 471, 418 and 419 r/w. 511, Sec. 120B of IPC. Accused were arrested and are presently on bail. During investigation, police had seized the record

of the Society, which is kept in the safe custody of the police.

4. Similarly, some of the members of Petitioner Society challenged the so-called resolution appointing Respondent No.8 as the Developer by filing a dispute against the Petitioner society which was then managed by Respondent Nos. 1 to 6. The said Dispute was however dismissed on 27.1.1998. That Order was carried in appeal before the Appellate Court. During pendency of the appeal, the General Body Meeting of Petitioner Society was held on 22.8.1998 and in that meeting they passed a resolution terminating the agreement executed by Respondent Nos. 1 to 3 with Respondent No. 8, the Developer. In view of the termination of the agreement by Petitioner society with Respondent No. 8, the Appeal was withdrawn as infructuous.

5. Respondent No. 8 thereafter filed a Suit No. 5455 of 1998 in the City Civil Court challenging the action of the society of terminating this Development Agreement. No interim relief, at any stage after filing the suit was granted by the City Civil Court. The suit however came to be dismissed on 7.10.2006 for default.

6. Petitioner - society thereafter by passing a Resolution appointed Respondent No. 7 as a Developer, who after his appointment submitted plans for approval to the Bombay Municipal Corporation. It appears that in view of the objection taken by Respondent No. 8 to the plans submitted by Respondent No.7, the Bombay Municipal Corporation after taking the opinion of the Advocate General, sanctioned the plans. After Respondent No. 8 having failed in his efforts, Respondent Nos. 1 to 6 filed a dispute before the Co-operative Court seeking a declaration that the Order passed by the Co-operative Court dated 27.1.1998 by which dispute filed by some of the members earlier had been dismissed is binding on Petitioner Society and Petitioner Society was not entitled to appoint Respondent No. 7 as the developer. It will be advantageous to reproduce prayers made in the dispute filed by Respondent Nos. 1 to 6 in Case No. CC/IV/354 of 2006, which reads thus:-

> **(a) It be declared that, the act of commission or omission of the Opponent No.1 Society in executing the Development Agreement dt. 25/02/2004 with the Opponent No.2, contrary to the findings given in the Judgment and Order dt. 27/01/1998 passed in case No.**

CC/II/419/333/92 of 1996, is valid and illegal and therefore the said Development Agreement stand terminated and be quashed;

(b) It be declared that, the Disputants are not liable to pay any amount and/or compensation to the Opponent No.1 Society and/or Opponent No.3 as per the Notice dt. 05/10/2006 or otherwise;

(c) The Opponent No.1 Society and Opponent No.2, its office bearers, agents, servants, person or persons claiming through them, be permanently restrained by an order of injunction of this Hon'ble Court, from proceeding with the work of approving the Plans from the BMC and starting the work of construction and spending any amount on the said project in any manner whatsoever."

7. Respondent Nos. 1 to 6 filed application for ad interim and interim reliefs. On the very same day, the Co-operative Court granted injunction restraining Petitioners and Respondent No. 7 from taking any steps to construct a building on the plot of land, till they amicably settle with Respondent No. 8. Petitioners carried that Order dated 15.1.2007 before the Appellate Court. The Appellate Court by the Order dated 2.4.2007, which is impugned in the present Petition, dismissed the Appeal. However, the Order passed by the trial Court was modified to read as under:

> **".. that pending and hearing and disposal of dispute the opponent No. 1 & 2 (Petitioner and Respondent No. 7 herein) are hereby restrained from proceeding the commencement of construction over the suit site including to get plans sanctioned and/or spend any amount over the said project pursuant to the agreement between opponent No. 1 & 2. Liberty to apply to both parties."**

8. It is against this backdrop, the Petitioner have filed present Writ Petition and have prayed for setting aside the impugned orders. It is clear that the members of Petitioner Society have been deprived of their right to construct a building merely because two groups in the Society are fighting over the appointment of the Developer. Mr. Joshi, learned counsel for Respondent No. 7 fairly stated that he has no objection if its appointment as Developer made by the Society in their General Body meeting held on 6.4.2003 is terminated, and if the Society is allowed to take their decision afresh for appointment of a developer with liberty to Respondent No. 7 to participate in the process of appointing a new developer by the Society. Mr. Desai, learned Counsel for the Petitioner also agreed to hold a General Body Meeting and take a decision afresh, appointing a new developer for the construction of a building over the plot of the Society. Mr. Parab, learned counsel for Respondent

No. 8, however opposed the prayers made by the learned Counsel for Petitioner and Respondent No. 7 across the bar and submitted that the right had accrued to respondent No. 8 pursuant to the resolution dated 15.8.1991, and, therefore, the Society cannot be allowed to appoint any other developer. This submission of learned counsel for Respondent No. 8 is devoid of any merit. It appears from the facts as aforementioned, that the society in its General Body Meeting held on 22.8.1998 had cancelled the appointment of respondent No. 8 and that resolution was challenged by Respondent No. 8 by filing a suit and that suit came to be dismissed for default on 7.10.2006. This order has not been challenged in further proceedings and it has attained finality. Considering the prayers made in the aforesaid dispute and the statements made by the learned counsel for the Petitioner and Respondent No.7, in my opinion, the dispute filed by Respondent Nos. 1 to 6 has rendered infructuous in so far as an appointment of the developer is concerned.

9. Thus, having considered the overall facts and circumstances of the case, I am satisfied that

the following order shall meet the ends of justice:

ORDER

(I). The appointment of Respondent No. 7 made by the General Body in its meeting held on 6.4.2003 stands quashed and set aside. The development agreement, if any, executed between the two, by consent stands cancelled. None of them shall have a right to make any claim against each other based on such agreement.

(II). Petitioner - Society shall hold a meeting of the General Body for appointment of a new developer. For holding the General Body Meeting, Mr. Vijay Shankar Singh, the Chairman of the Petitioner - Society or its Secretary will approach the Deputy Registrar of the Co-operative Societies, 'R' Ward, Malhotra House, Mumbai, within three weeks from today requesting him in writing along with a copy of this Order to appoint some responsible Officer from the Office of Deputy Registrar ("R" Ward) for holding a General Body Meeting of the Petitioner - Society.

(III). The Deputy Registrar is directed to appoint a responsible Officer from his office, who will convene the first General Body Meeting of the Petitioner - Society within three weeks therefrom, after issuing notice to all the members of the Society Under Certificate of Posting. He will hold meeting/s of the General Body to take the appropriate decisions.

(IV) The General Body will appoint a developer for construction of a building on the plot of land owned and possessed by the petitioner - Society. The Officer appointed by the Deputy Registrar is authorised to convene General Body Meeting/s of Petitioner - Society as and when required till the process of appointing new developer is complete and he shall report accordingly to the Deputy Registrar.

(V) Once the process for selecting a developer is complete, the Chairman and the Secretary or any other two members of the society nominated by the General Body in the presence of the Officer appointed by the Deputy Registrar will be allowed to execute the necessary agreements / documents with the developer and/or with any other agency or

agencies, which may be required to be appointed for completing the construction of the building.

(VI). It is needless to express that the Society and the officer appointed should follow the due procedure for appointing Developer for construction of a building on the plot of the Society. Respondent Nos. 7 and 8 are allowed to participate in the process of the appointment of a new developer.

(VII). It is open for Petitioner Society to invite quotations from other developers also by way of an advertisement. After the process of appointing the Developer in the presence of the Officer is complete, the existing Managing Committee will function independently in accordance with law.

(VIII). In view of this order, the Orders impugned in the Writ Petition render ineffective.

. With these directions, the Writ Petition is disposed of.

(D. B. BHOSALE, J.)